

family in the form of an allowance was not really very substantial or generous having regard to what he earned. One could therefore infer – and this, in my view, is a fair and reasonable inference – that over the years he must have accumulated considerable amounts of funds, some of which must have been invested. He, however, had made no disclosure of his investments and the income therefrom.

The four items of assets acquired may now be regrouped as follows. First, the Alnwick Road property is an asset which was acquired by the petitioner and the respondent by their joint efforts, and the division of this amount would have to be governed by s 106(2) of the Women's Charter. The other three assets, Goodluck Garden apartment, membership in Serangoon Gardens Country Club and the cash balances in the respondent's accounts with banks were acquired by the respondent solely and the division of these assets would have to be governed by s 106(4) of the Women's Charter. In making a division of all these assets between the petitioner and the respondent it is plainly an impossible task to quantify with any precision in monetary terms the amount of each party's contribution and I approached the problem in a broad manner, taking into account the factors prescribed in sub-ss (2) and (4) of s 106 of the Women's Charter. I divided the assets in the following manner, which I considered as fair and reasonable.

First, the petitioner and the children were required to vacate the flat where they were then staying by 31 December 1988 and were in need of accommodation urgently. The Alnwick Road property was their home before they left the respondent in June 1984. Since then the respondent had been staying there alone until he took up his present appointment in Japan. It had become vacant, and I therefore directed that the respondent should vacate and deliver possession of that house to the petitioner for occupation by her and the children.

Next, I dealt with the actual division of the assets. Taking into account all the relevant circumstances a fair division would be for the respondent to transfer to the petitioner all his interest in the Alnwick Road property and the petitioner to forego all her claims on the other assets. This would give to the petitioner and the children a permanent roof over their heads and afford them some security. In this connection, the respondent must make arrangement to discharge the charge on the Alnwick Road property which was created by him and for his own purpose. That charge is in favour of the Central Provident Fund Board and is to secure his withdrawal of funds from his CPF account, and as and when those funds are repaid to Central Provident Fund Board they belong to him. They do not really constitute a debt or liability as such. The respondent appeared to me to have sufficient resources to repay the moneys he withdrew from his CPF account and would be in a position to discharge the

A charge. Even if he did not have sufficient funds to repay the entire amount he could make use of the Goodluck Garden Apartment to raise a loan for the balance of the amount required. He is a person of some wealth.

B Lastly, as a protective measure I made an interim order restraining him from charging, selling or otherwise disposing of the Goodluck Garden apartment until his interest in the Alnwick Road property is transferred to the petitioner free from all encumbrances. That obviously is a protective order; otherwise he might further encumber that apartment or dispose of it with the result that it would be impossible to implement the division of assets as ordered. Of course, if he wishes to use the Goodluck Garden apartment to raise a loan to repay his CPF account secured on the Alnwick Road property, leave would be given with the necessary safeguard and the transactions could be so synchronised that the result contemplated by the order would be achieved. There should be no difficulty in that respect.

Order accordingly.

Solicitors: *R Ramason; Abraham Low & Partners.*

Reported by *Terence Tan Bian Chye*

Berta Services Sdn Bhd v Makhanlall & Co Ltd

F HIGH COURT (SINGAPORE) – SUIT NO 1081 OF 1978
CHAN SEK KEONG J
2 MARCH 1989

Legal Profession – Solicitor and client costs – First bill submitted to client – Request for taxation – Submission of second bill – Effect of first bill on second bill – Legal Profession Act (Cap 161, 1985 Ed), ss 117(3) & 125

G *Civil Procedure – Solicitor and client costs – Whether submission of one bill to client precludes solicitor from submitting a replacement bill*

H The solicitors of the plaintiffs in the action had sent a bill to their clients after the action had been decided. The clients had asked for taxation of the bill. The solicitors then sent a second bill to their clients and withdrew their first bill. The senior assistant registrar refused to tax this second bill and awarded costs to the clients. From this decision, the solicitors appealed.

Held, allowing the appeal:

I (1) Once the bill is delivered, the solicitor is bound by it, where the first bill is larger than the second, the rationale for this rule being to prevent the solicitor from escaping the consequences of the one-sixth taxation rule.

(2) Where the second bill is larger than the first, the rationale for this rule is that without it, a client may feel that he cannot safely pursue his request for taxation because the result may be that he has to pay more than what he was charged in the first instance.

(3) The correct principle is one which prevents a solicitor from attempting to impose on his client and yet achieve a fair balance between their respective interests.

(4) The items to be taxed would include many discretionary items and it is not unlikely that these items would not be allowed in full. To require a solicitor to itemise his bill for the same amount as his first bill would virtually ensure that he would not be able to recover the full amount of his costs claimed by him in his first bill, which claim may well be a fair and reasonable estimate or even an under estimate of his costs.

(5) To compel the solicitor to bring in a second bill in taxation form for the amount of the first bill may be unfair to the solicitor where the costs are payable in relation to a contentious matter.

(6) To bar a solicitor from claiming in taxation more than what he has already claimed from a client without taxation is one thing but to virtually bar him from claiming not more than what he has claimed is a different thing.

(7) The best rule would be therefore to allow a solicitor to deliver a second bill for a larger sum provided that upon taxation he shall not be entitled to more than what he has claimed in the first bill. Each party would bear its own costs. The appeal was therefore allowed.

Cases referred to

- 1 *Re Alsagoff* [1978] 2 MLJ 1xix (distd)
- 2 *Re Carven* (1845) 8 Beav 436; 50 ER 171 (refd)
- 3 *Re Tilleard* (1863) 32 Beav 476; 55 ER 187 (distd)
- 4 *Re Heather* (1870) 5 Ch App 694 (refd)
- 5 *Re Holroyde & Smith* (1881) 43 LT 722 (refd)
- 6 *Re Thompson* (1885) 30 Ch D 441 (refd)
- 7 *Re Russell Son & Scott* (1886) 55 LT 71 (refd)
- 8 *Re Grant, Bulcraig & Co* [1906] 1 Ch 124 (refd)
- 9 *Lumsden v Shipcote Land Co* [1906] 2 KB 433
- 10 *Fairway Construction Ltd v McGuire* (1969) 71 WWR 396 (refd)
- 11 *Loveridge v Botham* (1797) 1 Bos & Pul 49; 126 ER 772 (distd)
- 12 *Re Taxation of Costs* [1943] 1 KB 69 (refd)
- 13 *Parker v Blenkhorn* (1889) 59 LT 906 (refd)
- 14 *Re Edwin Sutherland Co's Bill of Costs* [1971] Qd R 318 (refd)
- 15 *Re Chambers* 34 Beav 177; 55 ER 602 (refd)

Legislation referred to

Legal Profession Act (Cap 161, 1985 Ed) ss 117(3), 125

C Arul for the appellants.
Jude Benny for the respondents

Cur Adv Vult

Chan Sek Keong J: This is an appeal by the solicitors ('the solicitors') of the plaintiffs in this action ('the clients') against the decision of the Senior Assistant Registrar refusing to tax their solicitor and client Bill of Costs No 1543/87 ('the second bill') which was submitted for taxation after the clients had requested taxation of an earlier lump sum bill of costs for a smaller amount ('the first bill') delivered by the solicitors.

In March 1986, judgment was obtained by the clients against the defendants in the action for damages

A which were assessed at \$89,438.80. The party and party costs were taxed at \$30,566.90 (which included \$566.90 for disbursements).

On 6 February 1987, the solicitors sent to the clients the first bill which was as follows:

B Berta Services Sdn Bhd 6 February 1987
Re: Suit No 1081 of 1978
Claim against Makhanlall & Co (Pte) Ltd

C To Professional Charges: Costs
For taking your instructions and \$47,500.00
attending to the above; Perusal of all documents received; Drafting, Preparing and Engrossing of the Writ of Summons and Statement of Claim; Preparing, Drafting and Filing of Court documents, Plaintiffs' Submission and Pleadings; Setting down the above Suit for trial; Court Attendances and Attending trial and Obtaining Judgment in favour of clients; Attending to Witnesses and taking statement; Corresponding with the Defendants' Solicitors; Preparing and Engrossing Bill of Costs; Including all other incidental matters, telexes, searches and correspondences in connection thereto:

D Disbursements:
Xerox 235.00
Telex/Trunk calls 135.55
Transport 60.90
Stamp fees 312.00
Postage 17.60
\$716.05
\$48,261.05

F A reminder for payment was sent on 27 February 1987 to which the clients on 6 March 1987 replied requesting taxation in the following terms:

G With regard to your charges for work done in respect of this matter, we are of the opinion that the charges appear to be too high. Under the circumstances, a more reasonable charge would enable us to convince our directors to settle your claim at an early date. In the meantime, we would appreciate it very much if you could have your bill taxed by the proper officer of the High Court. Thereafter, please set off our costs against the bill to be taxed and keep us informed of the matter.

H The solicitors on 11 March 1987 replied to this request in the following terms:

I In your letter you ask us to reduce the amount of our bill, at the same time you want us to tax our bill of costs. Both these are contradictory in that, we would only need to tax our bill if we cannot agree on the amount that should be paid as our costs.

As we have informed you, the party and party costs come to \$30,000 odd. The minimum that we would be awarded on

taxation by the Registrar of the High Court would be at least one-third more which would make the amount of our entitlement \$40,500 odd. We have rendered to you a bill for \$47,500 (excluding the disbursements of \$761.05 which you would have to pay in any case). The difference therefore is \$7,000 which we think we can easily justify at the taxation in view of the length of time the case took and the line of defence adopted by the defendants. Of course, if our costs on taxation amount to more than \$47,500 as set out in our bill, such larger amount would have to be paid by you and there is a fair possibility of the registrar doing just that.

However, in an effort to settle this matter without having to go through the extra expenses of drawing up a solicitor and client bill and having it taxed, we would be prepared to accept a sum of \$45,000 in full and final settlement of this case. This would be on a purely without prejudice basis.

In addition, if we have to tax our bill then the taxing and allocatur fees on the party and party costs of \$1,847 would have to be paid and there would be an additional taxing and allocatur fees on the solicitor and client bill of at least an equivalent amount. At the end of the day, after we have taxed our bill, we do not think you would end up paying anything less than the sum set out in our bill of 6 February 1987.

However, the decision is yours, we would have no objection to taxing our solicitor and client bill if you do not accept our without prejudice offer. The offer will remain open for the next 14 days, would you therefore kindly let us have a reply within that period.

The clients on 18 March 1987 reiterated their request for taxation as follows:

... As we have indicated in our letter of 6 instant, kindly arrange to have your bill taxed by the proper officer of the High Court. We are prepared to pay the taxing and allocatur fees on the party and party costs.

Hence, on 28 October 1987, the solicitors sent to the clients two copies of the second bill in taxation form for the amount of \$124,556 as profit costs and \$2,397.20 as out-of-pocket expenses, with the following explanation:

We refer to your letter of 18 March 1987 requiring us to tax our solicitor and client bill before 'a proper officer' of the High Court.

Taxing a solicitor and client bill is not often done and we had to secure the services of an outside court clerk to draw up the bill for us. These clerks are hard to come by and that is the cause of the delay. Meanwhile, we have had the bill drawn up. We have registered it with the High Court and obtain the date for the taxation. You would have to attend at the taxation of the bill on that date (12 November 1987). Please note that the matter may not be adjourned and it would be necessary to have it disposed of on that date.

At the taxation, counsel for the clients objected to the second bill being taxed on the ground that the solicitors were bound by the first bill. Counsel referred to the decision of the Chief Justice in *Re Alsagoff*¹ having decided this very point. The Senior Assistant Registrar accepted the submission and he dismissed the second bill with costs and, following the form of the order made by the deputy registrar in *Re Alsagoff*,¹ directed the solicitors

A to draw up another bill in taxation form for an amount not exceeding that rendered in the first bill.

Before me, counsel for the solicitors have submitted that it was not clear from the terms of the order recorded by the Chief Justice in *Re Alsagoff*¹ whether his Lordship, in affirming the decision of the deputy registrar, had decided that a second bill for a larger amount could not be submitted for taxation or that such a bill could be taxed but that the amount to be allowed on taxation should not exceed the amount of a first bill. The order of the Chief Justice was as follows: 'no more than the original lump-sum bill was to be allowed on taxation'.

C Counsel submitted that in view of the importance of this issue to the legal profession, this court should not only resolve the ambiguity but also reconsider the correctness of that decision in so far as it affirmed the decision of the deputy registrar. As the parties in *Re Alsagoff*¹ settled their dispute after that order, the ambiguity remained.

The decision of the deputy registrar in *Re Alsagoff*¹ was based on the following passage in *Butterworth's Costs* (4th Ed) Vol 2 p 31:

E As a general rule, once the bill is delivered the solicitor is bound by it, and the taxation must be on the bill as delivered (*Loveridge v Botham* [1797] 1 Bos & P 49 and *Re Carven* (1845) 8 Beav 436), and he cannot, therefore, under any circumstances, except by leave of the court, withdraw, reduce or increase his demand (*Re Heather* (1870) 5 Ch App 694, followed in *Re Holroyde and Smith* (1881) 43 LT 722; *Re Wells* (1845) 8 Beav 416; *Re Walters* (1845) 9 Beav 299)...

F For the purpose of this judgment, I shall use the expression 'the general rule' to mean the general rule as aforesaid. The two issues before me are, first, whether the general rule should be followed by the courts in Singapore and, secondly, if it is followed whether it should be applied in the manner directed by the Senior Assistant Registrar.

G The general rule applies to two different categories of cases: (i) where a second bill is for a smaller amount and (ii) where it is for a larger amount. Within these two categories, there are sub-categories: (iii) where the first bill is fully or partially in taxable form; (iv) where it is wholly not in a taxable form; (v) where the client has invoked his right to taxation and (vi) where he has not. The present case falls within category (ii), (iv) and (v).

H Most of the English authorities which have applied I the general rule were concerned with the delivery of a second bill which was smaller than the earlier bill, eg *Re Carven*,² *Re Tilleard*,³ *Re Heather*,⁴ *Re Holroyde & Smith*,⁵ *Re Thompson*,⁶ *Re Russell Son & Scott*.⁷ Also, most of them concerned bills in non-contentious matters where the bills were in taxable form, wholly or partially in that the reduced amounts in the second bills related to

specific items of charges for work done. It is useful to identify the rationale of the general rule in its application to cases of this type.

In *Re Thompson*,⁶ Cotton LJ said (at p 448):

Now it has been well established that when a solicitor sends in his bill, he gives the client to whom he sends it in a right to have that bill taxed. That rule was laid down to prevent any attempts being made by solicitors to impose on clients, who did not know what the proper charges were, by sending in a bill which would not stand taxation, and then, when taxation was insisted on or threatened, sending in another bill which they knew could stand taxation ...

In *Re Grant, Bulcraig & Co*⁸ Farwell J explained the object of the rule as follows:

There is an unbroken line of authorities since the passing of the Act which establishes that, for the purpose of taxation under the Act, and the costs thereof, the solicitor is bound by the bill that he has delivered. In the case of *In re Carven* Lord Langdale says that, 'if a solicitor has delivered his bill, he is bound by it, and the taxation must be on that bill; he is not entitled, as of course, to reduce his demand, or to reserve the power of delivering a bill containing other charges.' This general rule was recognized and approved by the Court of Appeal in *In re Heather*; and again in *In re Thompson* ... The solicitor is treated strictly because he is dealing with his client in a matter in which the solicitor is an expert and the client is not, ...

Now at first blush, it would seem odd that there should be a rule which prohibits a solicitor from voluntarily delivering a smaller bill in substitution for a larger bill for taxation. A claim on a smaller bill must enure to the benefit of the client even if nothing is taxed off eventually. There is an immediate gain to the client in the amount reduced without taxation and a potential gain to the client in the amount reduced after taxation. If the object of the rule is to protect clients against any imposition by solicitors, there should be no objection to a solicitor delivering a smaller bill for taxation and it is hardly to the point to insist on taxing the larger bill even if some items therein cannot stand taxation.

It seems to me that the real justification for the rule was the operation of the one-fifth rule of taxation under the relevant legislation in England. A solicitor who deliberately delivers an excessive bill to his client will not be allowed to avoid the consequences of taxation where the client has invoked his right of taxation. Farwell J in *Re Grant, Bulcraig & Co*⁸ adverted to this when he referred to the unbroken line of authorities since the passing of the Act, ie the Solicitors Act of 1843. The rule was to the effect that if more than one-fifth of a bill of costs is taxed off on taxation, the solicitors must bear the costs of taxation: see 44 *Halsbury's Laws of England* para 174 note 2. In Singapore, the relevant amount is one-sixth of the bill: s 125 Legal Profession Act.

In *Re Carven*,² Lord Langdale MR had this to say:

But this has happened; Carven had delivered a bill for more than he was entitled to, and if the excess were taken off upon taxation, he would have to pay all the costs, and he is therefore desirous of getting rid of the first bill of costs. I believe that this is the object of the application, and no other.

In *Re Thompson*,⁶ Cotton LJ said:

... the principle upon which the court has always refused to allow a solicitor to alter or withdraw a bill of costs ... is this, that it would open the door to fraud and would enable solicitors who are intending to act fraudulently towards their clients to send in an excessive bill, and a bill which they knew they could not support.

It is easy enough to appreciate why, in this type of case, the general rule is applicable even where the first bill is a lump sum bill. The crucial point is that the bill is acknowledged to be excessive by the solicitor by the fact of delivery of a lower bill.

However, it is difficult to see how the one-sixth rule of taxation can apply to a case where the second bill is for a larger sum. First, where the first bill is not in a taxable form, it is not possible to determine that any particular item therein is excessive and which therefore cannot stand taxation. Secondly, even where the first bill is in a taxable form, the solicitor in submitting a larger bill for taxation is not necessarily stating that any item in the first bill cannot stand taxation. On the contrary, he is stating that he has undercharged or understated his items, whatever the cause of it may be. The one-sixth rule of taxation is not avoided and because the bill is now for a larger amount there may in fact be a higher probability of a result in favour of the client. It is arguable that to apply the one-sixth rule to this situation would place a premium on penalising the solicitor rather than protecting the client. It is, of course, arguable that where a solicitor is allowed to increase his items as distinct from the amounts of the items, it would lessen the danger of the solicitor having to pay the costs of taxation: see *Vaughan Williams LJ in Lumsden v Shipcote Land Co*,⁹ but this argument cannot apply where the first bill is a lump sum bill where there are no items for which specific sums have been charged. For example, if a solicitor renders a bill which merely says: 'professional services rendered - \$5,000', no question of additional items can arise.

The rationale for the application of the general rule to a case where the second bill is a larger bill is most aptly expressed in the judgment of Devey CJ in *Fairway Construction Ltd v McGuire*,¹⁰ where a solicitor submitted a second bill for \$11,000 for taxation after his client had requested taxation of an earlier bill for \$3,500, as follows:

I must confess that while there may be some explanation for the solicitor being so modest in his evaluation of his services in the first instance, I am astonished that he should have been so far off the mark in the first instance and have come to the conclusion, on reflection and advice, that he was

justified in submitting a bill for \$11,500. The evidence is not before us which would enable us to make a finding of fact as to the reason.

I content myself, as I said before, by saying I am astonished that such a thing should happen. This is not a case of mistake as to the work done, and there is no evidence of special circumstances or unusual circumstances which would, in equity, entitle him to remedy his position. The danger in such cases, and I do not say the solicitor fell into this, or acted with this motive, has been referred to in some of the cases on the subject, namely, that if a solicitor submits a bill and a client wants it taxed before he pays, and the solicitor has the right, without any restriction to withdraw the bill and submit another one for a much higher amount of taxation, the client may very well feel that he cannot safely pursue his request for taxation because it may be that in the result he will have to pay considerably more than he was charged in the first instance. Clients should not be put in that position; that is the reason for the rule, and that is the danger here.

How is the general rule to be applied? There are not too many reported decisions in England on cases where solicitors have submitted larger bills in substitution for smaller bills. *Loveridge v Botham*¹¹ is one of the earliest examples. There the attorney had, after delivery in 1793 of a bill of costs, delivered in 1795 a second bill containing many new items some of which were raised in amount. The relevant portion of the reported judgment reads:

... the delivery of the former bill was conclusive evidence against an increase of charge on any of the items contained in it, and strong presumptive evidence against any additional items; but that if errors or real omissions in the former bill could be proved, they ought to be allowed for: *and directed the prothonotary to review on this line of distinction.* (emphasis added).

The following distinguishing features in *Loveridge v Botham*¹¹ should be noted: (i) the client had not invoked his right of taxation; (ii) the court did not decide that the second bill could not be taxed; (iii) the court directed taxation on the basis that the first bill was conclusive evidence against an increase of charge in items and strong presumptive evidence against additional items.

The guidelines on taxation laid down in *Loveridge v Botham* were followed by the Court of Appeal in *Lumsden's* case. There the client had failed to pay the solicitor's second amended bill. The solicitor commenced proceedings to recover his costs and the client in his defence pleaded that the solicitor could not sue on the second bill. The argument was rejected by the whole court. Fletcher Moulton LJ, in his judgment, said (at p 439):

The point raised for the defence is that the action was brought upon a second and amended bill delivered by a solicitor. This affords no valid defence. A solicitor is a person who does professional work for his client just as other professional persons might. His position differs from theirs in two respects only, viz, in that he comes under the Solicitors Act and is subject to the disciplinary powers of the court. If he is under a disability to amend a bill that he has

sent in, it must be by reason of one or other of those two things. It does not arise under the statute, for if it did the court could not, as they certainly can, give leave to deliver an amended bill. As to the disciplinary power of the court, I do not think that the court has ever taken up the position that a solicitor cannot amend his bill. If taxation has been held or threatened it might be said that it was too late to amend, because the client's right to tax is given to him in order to check exorbitant demands, and the value of this protection would be lessened if the solicitor could amend an exorbitant bill when he found that taxation was imminent. Where there has been no taxation, and no steps towards taxation, I cannot see why the court should prevent the solicitor from sending in a corrected bill, and I do not think that the courts have done so. If a solicitor sends in a bill of costs, and subsequently amends it by sending in a second with increased charges, the first bill would afford evidence that the items in it were right. The passage in *Archbold's Practice*, which was referred to in the course of the argument, to the effect that 'The delivery of a bill is strong evidence against an increase of charge in a subsequent bill for any of the items contained in the first bill, and presumptive evidence against any additional items,' seems to me to describe correctly the position, and while on the one hand it is open to the plaintiff to send in an amended bill it is open to the defendants on the other hand to use the first bill as evidence in opposition to the new or increased items inserted in the second bill.

It should be noted that when the learned Lord Justice said that it was too late to amend a bill where taxation had been threatened, it was in reference to a case of an exorbitant demand, ie where the first bill would be larger than the second bill.

In *Re Tilleard*,³ the solicitors delivered a bill containing two lump sum charges for £525 each. Afterwards, they delivered a rider to the bill containing the particulars and charges in detail in respect of these two items. The bill amounting to £1,246 16s 11d was ordered to be taxed and the taxing master received the rider in support of the items. The clients appealed and contended that the rider was inadmissible and that the solicitors were not entitled to any costs as the two items in the bill did not contain a sufficient specification of the work and charges in respect of which the two sums of £525 were claimed. The Master of the Rolls dismissed the appeal with these words:

If the question before the taxing master had been whether the solicitor was entitled to augment the 500 guineas to £789, I think he was not at liberty so to do. The solicitor says, 'I claim in respect of this item 500 guineas. You ask for an explanation: you are entitled to one, and this charge of 500 guineas is made up of items in respect of which I insist I was entitled to charge £790, but I only charge £525.' He does not alter his bill; the charge is still £525, and he cannot claim any more than that sum, but he is entitled to take all these items in and have them taxed for the purpose of showing how he makes out that the 500 guineas is due to him. It was the reason why I directed the taxation of this bill, and, if the taxing master had allowed more than 500 guineas upon it, I should have held that it was an improper allowance, and I should have disallowed the excess beyond the 500 guineas.

It should be noted that this decision was not concerned with a case when a solicitor had submitted a second larger bill for taxation.

*Re Tilleard*² was followed in *Re Russell Son & Scott*⁷ where the Court of Appeal held that solicitors having submitted a bill of costs containing a lump sum item of £1000 (which was found not enforceable on the ground that the agreement to pay the same was not in writing), were entitled to bring in for taxation a second bill containing the particulars of the charges set out in the lump sum bill so long as the charges did not exceed £1000. Cotton LJ said:

The court has frequently held, that where a bill of costs has been carried in by a solicitor for taxation in a taxable form, another bill cannot afterwards be brought in. But that is not the case here. In the present case the taxing master could not tax the bill because it was not in a taxable form, and therefore following *Re Tilleard*, he allowed the solicitors to bring in a supplemental paper containing the items of the costs. Of course, the solicitors could not have brought in a bill charging more than £1,000. In my opinion, the decision in *Re Tilleard* is good sense as well as good law, and the taxing master acted rightly in allowing the solicitors to bring in what was really an explanation of the costs, charges, and expenses of the action of *Wallis v Smith*. What was brought in and taxed was simply an explanation in detail of that for which the solicitors had previously charged £1,000 in a lump. (emphasis added)

It should be noted that this case was also not concerned with a solicitor having submitted a larger bill for taxation but with a bill in taxable form in which the items of the costs were explained. Accordingly, the statement that 'the solicitors could not have brought in a bill charging more than £1,000' was obiter.

In *Re Taxation of Costs*¹² the Court of Appeal criticized the correctness of the *Re Tilleard* line of decisions. Scott LJ said:

Until the making of the Solicitors' Remuneration Act General Order 1920 a solicitor could only recover his charges under the statutory provisions affecting him if he gave a detailed list of his charges and delivered that list as his bill of costs to his client. In several cases, of which *In re Tilleard* may be regarded as representative, it was held that under the practice as it then was, if a solicitor had charged his client with a gross sum which the client was not willing to pay, he being under no obligation to do so at law, the client could demand a detailed bill, and if on taxation of the detailed bill, the total sum amounted to more than the original gross sum charged by the solicitor, the client was only obliged to pay the amount of the original gross sum.

MacKinnon and Goddard LJ made similar observations. However, the underlying principle of *Re Tilleard*³ has received the approval of Lord Halsbury in the House of Lords in *Parker v Blenkhorn*¹³ where his Lordship said:

In the first instance, I should acquiesce in the view that a bill delivered by a solicitor stops him from claiming any more than he has claimed. I do not think he can alter his charges,

A and I do not think he can increase the amount. But it is a mistake to suppose that an error cannot be remedied.

*Re Tilleard*³ has, more recently, been followed by the Supreme Court of Queensland in *Re Edwin Sutherland Co's Bill of Costs*¹⁴ where both the parties involved were solicitors. In this case, the solicitor delivered a bill for \$512.45. The client requested a bill in taxation form whereupon the solicitor withdrew the first bill and substituted a second bill of costs in taxation form for \$748.69. The court held that taxation should proceed on the second bill subject to the condition that the amount after taxation should be limited to the amount of the first bill.

C My analysis of the relevant authorities shows that the courts in England, Australia and Canada have, in cases where the clients have demanded taxation of a bill of costs, applied the general rule in the following way:

- D (a) where the first bill contains lump sum items, the court will look at any explanatory rider to the bill to tax it: *Re Tilleard*,³ and will allow a second bill in taxable form which merely sets out the items of charges: *Lumden's case*,⁹
- (b) where the first bill is for a gross sum not in a taxable form, the court will allow him to deliver a taxable bill for a larger sum provided he cannot recover more than the gross sum: *Re Edwin Sutherland Co's Bill of Costs*,¹⁴
- E (c) where the first bill is for a gross sum, not in taxable form, the solicitor may not deliver a second bill in a taxable form for an amount larger than the gross sum: dictum of Cotton LJ in *Re Russell Scott & Sons*,⁷ *Re Alsagoff*¹ (deputy registrar); and the decision of the Senior Assistant Registrar in the present case;
- F (d) where the first bill is in taxable form, the solicitor will not be allowed to submit a second bill for a larger amount for taxation: *Fairway Construction Ltd v McGuire*.¹⁰
- G

H It can be seen that the decision of the deputy registrar in *Re Alsagoff*¹ is not supported by any direct authority on the point and is contrary to the approach of the Supreme Court of Queensland. In the circumstances, it is necessary to examine *Re Alsagoff*¹ to see how the deputy registrar decided the way he did.

I The grounds of decision of the deputy registrar in *Re Alsagoff*¹ show that in addition to the application of the general rule, he had also to consider the argument of the solicitors that the second bill, not being a consent bill, did not come within the terms of s 120(3) (now s 117(3)) of the Legal Profession Act which provided as follows:

In any case where a solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor. (emphasis added)

The deputy registrar dealt with the argument in this way:

However, this provision is to operate only where *both* solicitor and his client consent to taxation, and the taxation which follows must be on 'the bill' for which consent has been given.

....

To my mind, 'consent' to tax was given by both Messrs Donaldson & Burkinshaw's clients by letter dated 6 July 1977 and by Messrs Donaldson & Burkinshaw themselves through their own act of submitting a bill for taxation under s 120(3) of the Legal Profession Act (Cap 217) which, according to Mr David Wee himself, was really an itemized bill of costs No 1882/77 (that is, in substance the same bill), but for a larger sum.

These two passages clearly show that the deputy registrar found as a fact that the solicitors in submitting a second bill had consented to the first bill being taxed (the second bill being in substance the same bill but for a larger amount).

Applying the general rule to this unusual finding of facts, the deputy registrar was then able to and did direct the solicitors to submit an itemised bill reflecting the same amount as disclosed in the earlier bill.

The finding of fact in *Re Alsagoff*¹ is explicable only by the solicitors' concession that the second bill was in fact the first bill in itemised form. There is no such concession in the present case. In the absence of such a concession, it is not possible to construe the submission of a second bill for a larger sum as a consent to tax a previous bill for a smaller sum. Indeed, the reality here was that the solicitors submitted the second bill in performance of their obligation to do so. If the clients did not consent to tax the second bill, neither did the solicitor consent to tax the first bill. Accordingly, s 117(3) of the Legal Profession Act cannot be used to order taxation on the first bill or to direct the solicitors to submit a second bill in taxation form for the amount of the first bill.

In my view, the correct principle to apply is one which prevents a solicitor from attempting to impose on his client and yet achieves a fair balance between their respective interests. A fair balance is achieved by allowing a solicitor to deliver a second bill for a larger sum provided that upon taxation he shall not be entitled to more than what he has claimed in the first bill.

To compel the solicitor to bring in a second bill in taxation form for the amount of the first bill may be unfair to the solicitor where the costs are payable in relation to a contentious matter.

The items to be taxed would include many discretionary items and it is not unlikely that these items would not be allowed in full. To require a solicitor to itemise his bill for the same amount as his first bill would virtually ensure that he would not be able to recover the full amount of his costs claimed by him in his first bill, which

A claim may well be a fair and reasonable estimate or even an under-estimate of his costs. To bar a solicitor from claiming in taxation more than what he has already claimed from a client without taxation is one thing but to virtually bar him from claiming not more than what he has claimed is a different thing. As was observed by Romilly MR in *Re Chambers*,¹⁵ 'Taxation is not a vindictive proceeding, but a mode of ascertaining what is really due.' In my view, the principle I have enunciated 'is good sense as well as good law', notwithstanding Cotton LJ's dicta to the contrary in *Re Russell Scott & Sons*.⁷

B In the present case, the second bill could have been dismissed on the technical ground that as it was not a consent bill under s 117(3) of the Legal Profession Act, it could not be taxed without a court order. But that was not the ground of objection of the client. The objection was that the second bill was inadmissible for taxation as a matter of law. I have decided that this objection has no basis, but the fact remains that there is no court order to have the bill taxed. I am of the view that full justice will be done to the parties concerned by treating the omission of the client to take this point as having waived this objection and thereby consented to the taxation. The solicitors will, no doubt, agree with this course of action and consent to have the second bill taxed, which is what this appeal is all about. Any other course will result in unnecessary costs and further delay.

C Accordingly, I allow the appeal and direct that the second bill be taxed upon the condition referred to above, ie the solicitors cannot recover upon taxation more than what he has claimed in the first bill. Each party will bear his own costs in these proceedings, here and below.

D *Appeal allowed.*

E Solicitors: *Arul & Partners; Jude P Benny & Co.*

G Reported by Terence Tan Bian Chye

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